

Appl. No. 10/725,248
Docket No. P145
Amdt. dated February 17, 2011
Reply to Office Action mailed on February 1, 2011
Customer No. 27752

REMARKS

Claim Status

Claims 1, 7, 9-14, and 20-55 are pending in the present application.

Claims 13 and 24-52 have been withdrawn due to a previously submitted election restriction.

With this Response, independent claims 1, 14, and 53 have been amended. Support for these amendments can be found without limitation on page 7 of the specification as filed. No new matter has been added. Consequently, entry of these amendments is respectfully requested.

Notice of Non-Compliant

Claim 39 was previously not listed in the Response mailed October 27, 2010. However, Applicants have reviewed the application as filed and have noticed that claim 39 was not included in the original application. Accordingly, the claim numbering was shifted in the most recent Response of November 9, 2010, from 39 onward such that old claim 40 is now claim 39, and the total number of claims numbered is now 55 instead of 56. Reconsideration is respectfully requested. If the Office would like to take a different approach to the claim numbering, please contact the Applicants' undersigned representative as the Applicants are open to suggestions if the present approach is not satisfactory.

Note

It is initially noted that claims 53 through 55 are currently pending and under consideration. These claims were not withdrawn previously. However, these claims were not addressed in the Office Action of July 28, 2010. Consequently, Applicants respectfully request that these claims be considered on the merits and that any subsequent office action, if any, not be made Final.

Rejection Under 35 USC §112

Claims 1, 7, 10-12, 14, and 20-23 have been rejected under 35 USC §112, first paragraph, as failing to comply with the written description requirement. Applicants have amended independent claims 1 and 14 to more fully comply with the written description requirement by

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reciting the amount of water in the exact terms as disclosed in the specification as filed. Applications respectfully request reconsideration and withdrawal of the rejection.

Claims 1, 7, 10-12, 14, and 2-23 have been rejected under 35 USC §112, second paragraph, as being indefinite. Applicants have amended independent claims 1 and 14 to more fully comply with the definiteness requirement by specifically stating that the edible composition is for administration to companion animals. Applications respectfully request reconsideration and withdrawal of the rejection.

Rejection Under 35 USC §103(a) Over Cheuk

Claims 1, 7, 10-12, 14, and 20-23 have been rejected under 35 USC §103(a) as being unpatentable over Cheuk (US Publication No. 2003/0099759). Applicants respectfully traverse.

Cheuk does not disclose, teach, or suggest a gravy composition wherein the composition comprises water in an amount of at least about 80% by weight of the composition. Cheuk discloses a product that is a solid mass with recognizable discrete meat particles with a moisturized appearance. See Paragraph 49. Moreover, Cheuk discloses the general weight percentages of its composition, and states that the gravy portion of the composition comprises from about 40% to about 55%, desirably 45% to about 52%. This amount is quite different from the at least 80% water of the presently claimed gravy composition. Thus, as best understood by Applicants, the resulting product of Cheuk does not have a water content of at least 80%.

Moreover, Cheuk discloses, in the Abstract,

[a] canine pet food composition comprising a meat based material having an essentially solid mass assuming the shape of the container in which it is packed, said pet food having meat particles with a moisturized appearance and visually recognizable discrete food particles upon slicing the pet food mass after departure from the solid container.

Thus, as best understood by Applicants, Cheuk's disclosure of its pet food composition does not disclose, teach, or suggest a gravy composition comprising at least 80% water, as recited in amended claims 1 and 14 of the present application. Thus, as best understood by Applicants, Cheuk fails to teach each and every element of the claims and therefore cannot be said to obviate the claims.

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However, the Office Action states that one of ordinary skill would have had a reasonable expectation of success and would have been motivated to modify the amount of water in the pet food. Applicants respectfully disagree. First, no evidence or reason for motivation to modify that amount of water has been provided. Second, Cheuk discloses that pre-processing viscosity is important in preventing component separation during filling components as singly entity at the filler. See paragraph 42. Additionally, having discrete meat particles in the finished product is imperative in Cheuk (see paragraph 39) as well as visually recognizable discrete food particles when filled into a can (see paragraph 35). Modifying Cheuk to include additional water would defeat these imperatives. Such modification would require using over 40% more water (Cheuk discloses up to 55% while presently pending claims recite 80%), and such an amount of additional water would reasonably be expected to affect the appearance of the food particles.

Lastly, Cheuk discloses in paragraph 43 that by properly balancing of the carbohydrate and/or the above starch sources, one can obtain the proper stickiness or binding for maintaining certain textures as desired. Cheuk continues by stating that shorter chain polysaccharides are capable of binding with water to become sticky, which is detrimental if one desires a discrete particle texture in finished products. Accordingly, Applicants submit that such a modification is not simply a matter of picking and choosing the water content and then modifying Cheuk as such. Such modifications would not be simply a matter of picking and choosing and thus would be appropriate based on a fair reading of Cheuk.

Accordingly, for all of these reasons, Applicants respectfully request reconsideration and withdrawal of the rejection.

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CONCLUSION

This Response represents an earnest effort to place the present application in proper form and to distinguish the invention as claimed from the applied references. In view of the foregoing, reconsideration of this application and allowance of the pending claims are respectfully requested.

Respectfully submitted,

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